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SIPDIS

SENSITIVE

DEPARTMENT FOR WHA/CEN/BRIGHAM

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TAGS: PGOV SOCI PM

SUBJECT: PANAMA'S CHANCES FOR QUICK CONSTITUTIONAL REFORM FADING

Summary: No reforms before May Elections

**11.** (SBU) Due to a lack of support from the two biggest political parties and disagreements over procedure, the possibility that Panama's legislators will enact constitutional reforms in the near future is fading rapidly. Many politicians have acknowledged publicly a need to reform Panama's current dictator-drafted 1972 Constitution (as amended), but others claim that better enforcement of existing laws and better civic education could have more punch. The main impetus for reform comes from civil society (including UNDP Panama's Vision 2020, the Ecumenical Council, and other NGOs). As reform is likely to greatly affect the legislature, it is far from clear whether meaningful reform is even possible, given that the legislature will control the process. To remedy perceived corruption in Panama's public institutions, these groups want to change the method for selecting Supreme Court Justices, curtail the size and budget of the Legislative Assembly, reduce legislative immunity, and increase public access to information about government operations. All but the latter would require amending Panama's constitution, but doing so would not automatically introduce better governance, restore citizen confidence, nor eliminate the corrupt practices that undermine it. Political will is the missing ingredient.

**12.** (SBU) All four presidential candidates are on record favoring constitutional reform, but that does not mean that reform is likely in the short term. Citing inadequate time to prepare, the Electoral Tribunal is now cautioning against issuing a separate "fifth" ballot (quinta papeleta) on May 2 to ask voters whether they want a new constitution. A strong pro-reform vote could pave the way for a constituent assembly to write a new constitution without consulting the legislature (a plan of dubious constitutionality). Legislative Assembly President Jacobo Salas has asserted that his institution lacks the credibility to enact constitutional reforms. In any case, the current legislature probably will not consider either of the constitutional reform bills before it. End Summary

Consecutive Assemblies (The PRD/PP Coalition's choice)

**13.** (U) On October 27 legislators from the largest party, the opposition PRD, backed by allies from the Popular Party (PP), submitted an eight-page constitutional reform bill. The bill would limit the number of legislative seats to 60 (currently 78), reduce legislative alternates from two per principal to one, restrict legislative immunity, reduce the number of Vice Presidents from two to one, modify the process for electing Supreme Court Justices, and codify the use of a parallel constituent assembly for future reforms. The bill would follow the procedure described in Article 308 of the constitution. Under the constitution, two successive legislative assemblies would have to approve an identical set of reforms for the constitution to be changed.

The Arnulfista Response: A Fifth Ballot

**14.** (SBU) Rejecting calls for a constituent assembly, Arnulfista legislators proposed a bill on November 17, 2003 for a fifth ballot for the May 2, 2004 elections. (The other four ballots correspond to President, Legislators, Mayor, and Local Representative - Representante de Corregimiento in Spanish). The fifth ballot as proposed by the Arnulfistas would ask Panamanians: (i) whether they want constitutional reforms and (ii) if so, whether they would like to carry out reform through consecutive legislative assemblies (per Article 308 of the current Constitution) or through

a parallel constituent assembly (currently an unconstitutional procedure). (COMMENT: Ironically the Arnulfista bill does not require the incoming government to heed the result of the fifth ballot, but if a government ignored the results of a nationwide popular vote, it would face a substantial drop in public confidence. END COMMENT)

Bills sleeping comfortably at the Legislative Assembly

15. (SBU) The Legislative Assembly has not discussed either of the above-mentioned bills beyond the first of three debates necessary for their passage. The Assembly adjourned on December 31. President Moscoso has called Extraordinary Sessions of the Assembly from January 13 through January 16, but not to discuss either of the above-mentioned bills. Although the Arnulfistas control the Assembly, Arnulfista legislators have shown little interest in advancing debate on their bill. The PRD is pleased that the Arnulfistas have not pushed hard for a fifth ballot.

Parallel Constituent Assembly: Endara's pick

16. (SBU) Presidential candidate Guillermo Endara and his close followers strongly support calling a constituent assembly, although it would be a measure of doubtful constitutionality. Endara does not support the Arnulfista bill described in paragraph 3. Endara advisor told Pol Counselor at a December 22 meeting that if elected, he would call a parallel constituent assembly on the day he takes office. Endara considers a vote for him as a vote for a constituent assembly, his advisors say. (NOTE: A December 2003 CID-Gallup poll showed that 75 percent of respondents didn't even know what a constituent assembly is. END NOTE) Endara, who governed Panama from Operation Just Cause (December 1989) through August 31, 1994, has been blamed throughout the years for not having promoted deep constitutional reforms through a Constituyente while in office. The special circumstances early in his administration (great public support to eliminate the military, establish a democratic system, reconstruct the economy and a weak PRD) would have facilitated amending the 1972 constitution, designed to legitimize Panama's dictators, critics say.

Comment: Reforms later, if at all

17. (SBU) Political insiders believe that the two largest parties (PRD and Arnulfistas) are supporting constitutional reform only to appease civil society and dull the blows from presidential candidate Endara's constant demands for a constituent assembly. In theory, the Legislative Assembly could still could approve a fifth ballot when it reconvenes on March 1, but it would be quite difficult for the Electoral Tribunal to print over one million ballots to be distributed throughout the country in time for the May 2, 2004 elections. The PRD bill, which proposes a more conservative reform method, could be discussed after March 1, but by law would need to be passed by June 30, 2004. After a new President emerges from the May 2 election and control of the Legislative Assembly becomes clear, negotiations could proceed on constitutional reforms. As the reformers are intent on significantly reducing the perks of legislators and as the legislature probably will have a decisive role in framing reform, it seems doubtful that the idea will get far. All bets are off if a constituent assembly is formed, but that is also unlikely.